IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 390 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD.GOVINDJI MOHANLAL BHATT

Versus

KOLI BABUBHAI MANJIBHAI

Appearance:

1. First Appeal No. 390 of 2005

MR DC SEJPAL for Appellants

DS AFF.NOT FILED (N) for Respondent No. 1

MRS VASAVDATTA BHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. Admitted.

2. Since the issue involved in this appeal runs in a narrow compass and the appeal is arising out of rejection of the claim made by the appellants ('the claimants' for short) claiming dependency benefit for the death of their father, by consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today and is disposed of by this judgment.

3. Instant appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is directed against the judgment and award dated 16.6.2003 rendered in MACP No. 184 of 1996 by the MACT (Aux.) Amreli by which the petition filed by the claimants under section 166 of the Act claiming compensation of Rs.90,000/- for the untimely demise of their father in a vehicular accident came to be rejected.

4. The claimants filed MACP No. 184 of 1996 before the MACT (Aux.) Amreli, inter alia contending that on 22.3.1996 deceased Govindji Bhatt was travelling on the pillion seat of Suzuki motor cycle which was ridden by one Bhupendrabhai Bhatt proceed from Rajula towards Dedan and when they reached at village Sarakadia, ST bus bearing registration No.GQE 8872 driven by its driver in a rash and negligent manner came from the opposite direction and dashed with the motor cycle and as a result thereof the rider of the motor cycle as well as pillion rider, father of the claimant, were thrown off the motor cycle and fell on the road and sustained serious injuries. They were thereafter shifted to hospital. During the course of treatment Govindji Bhatt succumbed to the injuries. According to the claimants, the accident had taken place because of the rash and negligent driving of the offending ST bus by its driver.

5. Putting forward the claim for compensation, the claimants have averred that the decased was getting monthly income of Rs.12,000/- Besides this he was also cultivating his own land and derived income of Rs. 1 lac therefrom. The claimants who are heirs and legal representatives of the deceased were depending upon the income of the deceased and therefore they are entitled to claim compensation. The claimants therefore filed claim petition claiming total compensation of Rs.4 lacs which subsequently came to be reduced to Rs.90,000 together with interest and costs from the driver and ST Corporation who are the respondents in this appeal.

6. The claim petition was contested by the ST Corporation by filing written statement Ex.12 wherein the factum of negligence on the part of the driver of the ST

bus was denied. Similarly, income of the deceased was also denied. It was contended that rider of the motor cycle himself was negligent in riding the motor cycle which has caused the accident and therefore it was prayed to dismiss the claim petition against the ST Corporation.

7. The Tribunal on appreciation, evaluation and analysis of the evidence on record, came to the conclusion that the accident was the result of rash and negligent driving of the driver of the ST bus. However, it was held by the Tribunal that since the claimants were earning persons not dependent on the income of the deceased and therefore they were not entitled to claim compensation from the ST Corporation and accordingly the claim petition was dismissed which has given rise to this appeal at the instance of the original claimants.

8. This Court has considered the submissions advanced by Mr. DC Sejpal, learned advocate of the appellants and Ms. Vasavdatta Bhatt, learned advocate for the respondents, perused the impugned award and the set of evidence supplied by them during the course of their submission and the judgment cited at the bar.

9. So far as the factum of accident is concerned, it is not in dispute. Similarly, so far as the negligence on the part of the driver of the ST bus is concerned, there also cannot be any dispute. The only question which calls for determination of this Court is as to whether the claimants who are the heirs and legal representatives of the deceased are entitled to get compensation in a matter under the Act for the purpose of getting compensation for the death of their father Govindji Bhatt.

10. In this connection, it would be advantageous to refer to the judgment of the Supreme Court in the case of Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another, AIR 1987 SC 1690. In the said case the Supreme Court has said that legal representatives applying for compensation need not necessarily be one of the persons contemplated by section I-A of Fatal Accidents Act. It was further deduced that brother of deceased can maintain it if he is a legal representative of deceased under Section 110-A of the Act. In para 11 of the said judgment, it has been observed as under:

> "....Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for

> realisation of compensation and that is provided by S.110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in S.110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by S.110-B of the Act amongst the legal representatives for whose benefit an application may be filed under S.110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents....."

11. Applying the principles laid down by the Supreme Court in the above referred to judgment to the facts of the present case, there is no manner of doubt that the claimants are legal representatives of deceased Govindji Bhatt and therefore entitled to recover compensation on account of untimely demise of their father due to motor vehicle accident.

12. Having held that the claimants are legal representatives of deceased Govindji Bhatt, the next question that arises for determination of this Court is as to what amount of compensation should be awarded to them for the untimely death of their father Govindji Bhatt?

13. It may be noted that so far as the income of the deceased is concerned, there is no clinching evidence in this regard. However, taking the notional income of the deceased at Rs.15,000/- per year and looking to the age of the deceased which according to the post-mortem report was 55 years whereas as per oral evidence was 60 years, according to this court 8 years purchase factor is to be applied and in doing so figure of Rs.1,20,000/- would be worked out. However, to find out the correct dependency

benefit, Rs.1,20,000/- is required to be sliced down by 1/3rd for the personal upkeep of the deceased if he would not have met with the accident. Therefore, the net dependency benefit would come to Rs.80,000/(Rs.1,20,000 minus Rs.40,000). Adding to this figure an amount of Rs.10,000/- under the head of conventional amount i.e., expectation of life, the total figure worked out at Rs.90,000/-.

14. Seen in the above context, the impugned judgment and award is required to be quashed and set aside by allowing the claim petition. It is held that the claimants are entitled to receive compensation of Rs.90,000/- with interest at the rate of 6% per annum from the date of the application till its realisation.

15. For the foregoing reasons, the appeal succeeds and accordingly it is allowed with no order as to costs. The impugned judgment and award dated 16.6.2003 rendered in MACP No. 184 of 1996 by the MACT (Aux.) Amreli is quashed and set aside. MACP No.184 of 1996 succeeds and accordingly it is allowed with no order as to costs. The claimants are entitled to get compensation of Rs.90,000/- together with interest at the rate of 6% per annum from the date of the application till its realisation.

16. The respondent - ST Corporation is hereby directed to deposit the aforesaid amount within a period of eight weeks hereof.

17. On the amount as aforesaid being deposited by the S.T. Corporation, the Tribunal is directed to pass appropriate order with regard to deducting the court fees stamp, if any, apportionment and disbursement of the amount in favour of the claimants.

(A.M. Kapadia, J.)

(karan)